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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Report prepared by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants, submitted pursuant to resolution 1999/44 of the Commission on Human Rights

Addendum

Visit to Canada

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Introduction

1. At the invitation of the Government of Canada, the Special Rapporteur on the human rights of migrants visited Canada from 17 to 30 September 2000. The Government's invitation was extended pursuant to a request made in a letter addressed to all Governments informing them of the Special Rapporteur's appointment and the provisions of Commission on Human Rights resolution 1999/44, which established the mandate, requested Governments to cooperate with the Special Rapporteur and encouraged them to consider inviting her to visit their countries. The Canadian Government's invitation was the first to be received by the Special Rapporteur, who, in view of the large number of migrants admitted by Canada, decided to accept it.

2. The Special Rapporteur takes this opportunity to thank the Government of Canada for inviting her to visit the country and for the valuable assistance and cooperation she received, which greatly facilitated her work. Before the mission, the Special Rapporteur and her support staff contacted the Permanent Mission of Canada to the United Nations Office at Geneva, which played an important part in the work of planning and facilitating the visit. During her stay in Canada, the authorities acceded to all her requests for meetings. She and her staff enjoyed full freedom of movement and had free access to private individuals and non-governmental organizations (NGOs). She notes with gratitude that she was able to undertake her visit in a transparent and open atmosphere. She also wishes to express her sincere thanks for the assistance extended by the numerous NGOs and private individuals whom she had an opportunity to interview during her stay in Canada. And she is grateful for the logistical support of the Ottawa office of UNHCR.

3. This report is not and cannot be a substitute for official investigations. Its scope is limited to the mandate entrusted to the Special Rapporteur and focuses on the current situation. Unravelling the complexity of the immigration situation prevailing today in Canada would require a debate extending beyond the scope and aims of the present report.

4. The conclusions and observations contained in this report are based on the information gathered during the mission and on the relevant international instruments. In this respect, the Special Rapporteur has paid particular attention to the following questions: organization of migration in Canada; measures adopted by the Government to guarantee the human rights of migrants; methods and means used to control so-called illegal migration; reliability of the investigations carried out by the authorities into the incidents considered; and measures adopted to prosecute persons responsible for violations of the human rights of migrants.

I. PROGRAMME OF THE VISIT

5. The Special Rapporteur had meetings with representatives of the Department of Foreign Affairs and International Trade, the Department of Citizenship and Immigration Canada (CIC) and the Immigration and Refugee Board, at the federal and regional levels, and with representatives of the provincial governments. She also had meetings with representatives of NGOs in Montreal, Toronto and Vancouver. She met with, *inter alia*, NGOs dealing with the situation of migrants from various regions of Asia, Latin America and Africa, and with female domestic workers (known as live-in caregivers) and refugee claimants. In all cities except Ottawa, she visited detention centres, at which she was able to interview some of the detainees.

During all her visits, she asked to interview women, with the aim of analysing the question from a woman's perspective. She also asked to meet with various mothers and people from what are known in Canada as the "visible minorities" with a view to analysing the question from the standpoint of its consequences for children and of the relationship between the phenomenon of migration and the question of racism, racial discrimination and xenophobia. In the academic field, she had meetings with members of various Canadian universities.

6. During the first part of her mission, from 18 to 20 September, the Special Rapporteur met with officials and official institutions in Ottawa. On 18 September, she attended an information meeting organized and chaired by Ms. Janice Cochrane, Deputy Minister of Citizenship and Immigration, and by Mr. Michael Dorais, Associate Deputy Minister in the same department. On the same day, she participated in two round tables organized by the CIC and presided over by Ms. Rosaline Frith, Director of the Integration Branch, at which officials from that department gave presentations on the system for selection and integration of migrants and refugees in Canada. She later attended a reception given in her honour by the Department of Foreign Affairs and International Trade, at which she met a large number of senior officials from the human rights branch and members of academia. Among other members of the Department, she had talks with the Director of the Human Rights and Humanitarian Affairs Branch, the adviser for immigration and refugee affairs, and the Deputy Director responsible for relations with the United Nations and international organizations. During her stay in Ottawa, she attended a round table organized by the Department of Foreign Affairs and International Trade, at which statements were made by representatives of the Immigration and Refugee Board, the justice, human resources development, the status of women and Canadian heritage divisions, and the Canadian Human Rights Commission. Mr. Joe Fontana, Chairperson of the Citizenship and Immigration Commission and member of the Canadian Parliament, organized a working dinner in honour of the Special Rapporteur; this was attended by members of the Parliamentary Commission. The Special Rapporteur also met with members of the Department of Justice and, before leaving for Toronto, with Mr. Peter Showler, Chairperson of the Immigration and Refugee Board.

7. In Ottawa, the Special Rapporteur visited the regional UNHCR office and met with Ms. Judith Kumin. She also met with various NGO representatives, including, *inter alia*, the Secretary-General of the Canadian section of Amnesty International, a representative of International Social Service Canada (ISS), representatives of Immigrant and Visible Minority Women against Abuse and representatives of the Canadian Human Rights Foundation.

8. From 20 to 23 September, the Special Rapporteur visited the city of Toronto, where she had meetings with various senior members of the CIC and the regional office of the Immigration and Refugee Board. She had talks with, *inter alia*, Ms. Irene Bader, Regional Director of the CIC, Ms. Cheryl Munroe, Director of the Board's Selection, Integration and Refugee Division and Mr. Pierre Gaulin, Director of the settlement and ports of entry department. During her visit to the Board's offices in Toronto, the Special Rapporteur attended a hearing to determine whether or not refugee status should be granted to a Somali citizen. After the hearing, she had an opportunity to discuss various matters with the members of the Board responsible for determination of refugee status. She also held working meetings with Ms. Irene Bader, Director of the regional office of the Ontario Immigration Department, and members of her staff, and with representatives of the provincial government.

9. The Special Rapporteur later went to the reception centre run by COSTI, a social services and education agency, where she had an opportunity to talk to various refugee claimants. COSTI was founded by the Italian community in Canada in order to coordinate a number of services available to immigrants during the post-war period. COSTI's mandate is to provide services to persons who have recently arrived in Canada and members of their families. The Special Rapporteur visited the reception centre and met a group of refugees who had recently arrived in Canada and were attending a self-expression class given by a psychologist. The persons attending the class held an open dialogue with the Special Rapporteur and expressed their hopes and concerns. At the Special Rapporteur's request, the CIC allowed her to visit the "Celebrity Inn" detention centre for immigrants where, after visiting the premises, she interviewed several male and female detainees.

10. Also in Toronto, the Special Rapporteur attended the forum on migration convened by the Canadian-Asia Working Group (an NGO), which was attended by members of a large number of NGOs and trade union organizations, including the Canadian Labour Congress, the Community Caregivers' Cooperative (NGO comprising female domestic workers), Migrant Agricultural Workers, United Farm Workers of America, United Food and Commercial Workers' International Union and the Migrant Women's Collective, and a representative of Frontier College. On the question of undocumented migrants, statements were made by representatives of the following organizations: Metro Toronto Chinese and South-east Asian Legal Clinic, Parkdale Community Legal Clinic and Migrant Sex Workers' Advocacy Group. In addition, the Special Rapporteur met representatives of the Inter-Church Committee on Refugees, the Toronto Research Project and the Global Alliance against Trafficking in Women, the independent expert Hélène Moussa, Ratna Omidvar and Andrew Brouwer of the Maytree Foundation, Ms. Abigail Bakan of the Department of Political Science of Queen's University, Intercede, and Mr. Michael Creol of the Centre for Refugee Studies of the University of York. In the context of these meetings, the organizers enabled the Special Rapporteur to meet personally with male and female migrants whose cases were being dealt with by the non-governmental and trade union organizations represented. She also met female domestic workers from the Philippines, temporary agricultural workers and two migrant women who identified themselves as sex workers.

11. On the afternoon of 23 September the Special Rapporteur travelled to Vancouver, where she stayed until 26 September. During her visit to this city, she had meetings with representatives of the government of British Columbia, the CIC regional office, and the Immigration and Refugee Board. She interviewed, *inter alia*, Mr. Michael Smith, CIC Regional Director, and members of his staff, and Mr. Richard Jackson, Assistant Deputy Chairperson of the IRB's Convention Refugee Determination Division. She participated in a round table organized by the government of British Columbia, which was attended by Mr. Bert Phipps, Deputy Provincial Director of the Adult Custody Department, and Ms. Mary Clare Zak, Director of the Community Liaison Division within the British Columbia Ministry of Multiculturalism and Immigration.

12. The Special Rapporteur had a meeting at Simon Fraser University which was attended by various faculty members and representatives of the following NGOs: Direct Action against Refugee Exploitation (DARE), Filipino Canadians' Organization, Vancouver Association of Chinese Canadians, Filipino Nurses' Support Group, Philippine Women's Centre of

British Columbia (Kalayaan Centre), Filipino Migrants' Group, Vancouver Refugee Network, Rainbow Refugee Committee, Mennonite Central Committee Refugee Office, Store Front Orientation Services, Coalition against Trafficking in Women - Canada, FREDA Centre for Research on Violence against Women and Children, Canadian Human Rights Foundation, and Amnesty International, and by a number of lawyers representing refugee claimants in this region. The Special Rapporteur also had the opportunity to talk to various migrants. She visited the Burnaby correctional centre for women, where she spoke to 14 women of Chinese origin, of whom 10 had been among a group of Chinese nationals who had reached the coast of British Columbia in different boats in 1999 and 4 had arrived at Vancouver airport. The Special Rapporteur interviewed three of them separately, and they sent her a written account of their situation.

13. Before leaving Vancouver, the Special Rapporteur had another meeting with representatives of various NGOs, lawyers representing refugee claimants and individual migrants, who had been invited to meet her by these organizations. Among the persons interviewed by the Special Rapporteur were a number of Philippine female domestic workers and two Chinese nationals, one male and the other female. The Special Rapporteur interviewed the Chinese woman in private; she had arrived in Canada in one of the previously mentioned boats and told the Special Rapporteur of her personal experience during the whole process of leaving China, arriving in Canada, detention in the Prince George penitentiary and her subsequent release.

14. On 26 September, the Special Rapporteur travelled to Montreal, where she was received by Ms. Madeleine Gagné, Associate Deputy Minister of Citizenship and Immigration within the government of Quebec. She also interviewed several heads and other members of the CIC regional office.

15. In Montreal, the Special Rapporteur interviewed, *inter alia*, representatives of the following NGOs: Table de Concertation, Canadian Council for Refugees, Canadian Human Rights Foundation, Filipino Workers' Support Group, Filipino Parents' Support Group, Filipino Women's Organization Quebec (PINAY), Association des aides familiales du Québec, Carrefour d'aide aux nouveaux arrivants, Comité québécois pour la reconnaissance des droits des travailleurs haïtiens en République dominicaine (INC) and Action Refugees Montreal. The Special Rapporteur visited the Laval detention centre and interviewed a Costa Rican, a Haitian and a Pakistani, who described their personal situation and the reasons which had led them to that situation.

16. On 28 September, the Special Rapporteur travelled to Ottawa, where she had a meeting with Ms. Elinor Caplan, Minister of Citizenship and Immigration, and with other members of the CIC for a final exchange of views before her departure. On 29 September, in Ottawa, the Special Rapporteur attended a meeting presided over by Ms. Joan Atkinson, Associate Deputy Minister, and also attended by representatives of all the governmental departments responsible for migrant-related questions in Canada from the CIC, the Department of Foreign Affairs and International Trade, and the Immigration and Refugee Board. At this meeting the Special Rapporteur expressed her thanks for the opportunities she had been given to be able to carry out her mission and to visit all the detention centres in which she had been interested.

II. GENERAL CONTEXT OF IMMIGRATION IN CANADA

17. Canada is a party to almost all the international human rights instruments, including the International Covenant on Civil and Political Rights and its two additional protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto. However, as at the time of completion of the present report, Canada had not ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

18. Statistics show that Canada is the country which receives the greatest number of immigrants per inhabitant and per annum. Under its immigration policy, the Government admits approximately 225,000 persons a year. In addition, between 25,000 and 35,000 people a year claim refugee status in Canada. For the year 2000, the CIC estimates that the number of immigrants will have risen from 177,900 to 195,700, while the number of refugees will have risen from 22,100 to 29,300, as reflected in the Annual Immigration Plan 2000 handed to the Special Rapporteur by Ms. Elinor Caplan, Minister of Citizenship and Immigration.

19. Canada has been and is a country of immigration; its current population - approximately 30 million - is made up of a wide variety of people originating from various regions of the world. Up to the mid-1960s, immigration was mainly of European origin. This characteristic was modified with the introduction of the Immigration Act of 1976, which established broader selection criteria based on estimated economic contribution to the country and on family reunification policies.

20. The 1976 Immigration Act, with its changes and amendments, constitutes the pre-eminent body of law on immigration matters. The Act is due to be superseded by a new immigration law which, at the time of completion of the present report, is in the form of a bill (Bill C-31) and is being debated by Parliament. According to the information received by the Special Rapporteur, the Bill is intended to simplify existing immigration law.

21. The 1976 Act defines areas of competence as between the Federal Government and the provincial governments. In the event of conflict, the federal legislation prevails. There are various agreements with different provinces, among which particular mention should be made of Quebec, which has a special regime. The provinces determine the eligibility of claimants and the Federal Government determines their admissibility. In the first part of the above-mentioned Act, section 6 (1) establishes the criteria relating to the selection of immigrants.

22. According to information provided by the CIC, most of the people arriving in Canada with the intention of settling there do so as landed immigrants, to use the term contained in the law. These landed immigrants are eligible, after three years of accumulated residence within a period of four years, to obtain Canadian citizenship. In conformity with the above-mentioned section 6 (1), Canada has an established immigration system comprising the following classes: independent immigrants, entrepreneurial immigrants, relatives, Convention refugees, and immigrants admitted for business reasons or on the basis of family links. According to the

above-mentioned provision of the 1976 Act, "any immigrant, including a Convention refugee, and all dependants, if any, may be granted landing if it is established to the satisfaction of an immigration officer that the immigrant meets the selection standards established". Canadian citizens and permanent residents in Canada may sponsor the application for landing of a relative or an immigrant belonging to one of the classes recognized by the Act.

23. The Act covers two methods of applying for immigrant status. First, there are those people who are considered to be refugees outside Canada and arrive in the country with guarantees of permanent residence, and then there are those who ask to be considered as refugees at the port of entry or within the country. Canada is managing the second largest refugee resettlement programme in the world, adopting a broad approach to the 1951 Convention. During the past decade, Canada has resettled more than 140,000 refugees originating from all continents. Although the great majority of resettlement cases are sponsored by the Government, the law also admits the possibility of private sponsorships. The Government has a well-developed protection and reception system. The Special Rapporteur visited a reception centre in Toronto run by COSTI, an organization which provides social assistance and education for recent arrivals in Canada, and had the opportunity to look at the facilities provided and to talk to a group of refugees who were housed there.

24. Since 1989, the determination of the status of refugee claimants at the port of entry or within Canada has been effected by means of a quasi-judicial process carried out by an independent decision-making body known as the Immigration and Refugee Board (IRB). The Act establishes three stages in the determination of status procedure. The first involves the decision of the senior immigration officer on whether the claim is admissible. To this end, the officer studies the case and the documentation, if any, of the claimant and refers admitted claims to the Board.

25. If the claim is admitted, the person is allowed to enter Canada pending a hearing to consider his refugee status. A refugee claimant receives protection once he is considered to be a Convention refugee, in accordance with the Canadian Immigration Act, the 1951 Convention and the 1967 Protocol. Also in conformity with the Convention, a refugee enjoys protection against forcible repatriation to a place where he could be persecuted.

26. The holding of the above-mentioned hearing is the responsibility of the IRB. If a person considered to be a refugee proves to have a criminal record, an immigration officer can reconsider his eligibility. It may also be reconsidered if it is found that the positive determination was based on fraud or misrepresentation.

27. If the claimant does not have documents proving his identity or there are grounds for believing that he will not appear at the hearing to determine his status or that he may constitute a danger to society (because of his criminal record), he is detained pending the hearing. In this case, the claimant has the right to a review of the detention order within his first 24 hours of detention. If he remains in detention without a decision on the case, he is offered a further review within 7 days, and at the latest 30 days while still in detention.

28. The Immigration and Review Board, which is regulated in section VI of the Immigration Act, is responsible for the process of determining refugee status in accordance with the 1951 Convention and the 1967 Protocol. It handles examinations of immigration applications and reviews of detentions, and reports to Parliament on its activities and decisions through the Minister of Citizenship and Immigration. Although both organizations perform different roles, there are shared responsibilities and many of their actions complement one another, as indicated in the information provided by the Government. The federal organizations and the departments, the provincial governments, the various professional bodies and NGOs play a crucial role of cooperation with the Board. The Board comprises three divisions: the Convention Refugee Determination Division, the Immigration Appeal Division and the Adjudication Division.

29. The Convention Refugee Determination Division is responsible for handling refugee claims made within Canada. It is also responsible for refusing refugee status when it is determined that such status has been fraudulently obtained, and for termination of status when a refugee has secured the protection of his country of origin. The Immigration Appeal Division deals with appeals against deportation orders and cases of termination of sponsorship in order to secure permanent residence. The Adjudication Division is responsible for examinations of persons subject to examination, removal or deportation procedures, and for reviews of detention. Examinations are carried out in respect of persons who are believed to belong to inadmissible classes or persons whose deportation from Canada may be appropriate.

30. During the whole process of determination of status, the claimant has the right to speak for himself or to be represented by a lawyer, a relative or a friend. In the event of acceptance of the claim, the claimant, as previously stated, may apply for permanent resident status within 180 days. Immediate family members may be included in the application. However, a claimant may not be granted leave to apply for permanent residence if he does not have satisfactory identity documents or if that person or any dependant is inadmissible for criminal or security reasons.

31. When the Convention Refugee Determination Division decides that a claimant is not a Convention refugee, it notifies the claimant explaining the reasons for the negative decision and the possibilities of applying for a judicial review by the Federal Court. A person receiving such notification has 30 days in which to leave the country voluntarily. However, he has 15 days in which to file the application for a judicial review. With certain exceptions, according to the Board, the person concerned has the right to remain in Canada pending the outcome of the judicial review. The Federal Court decision may be appealed to the Federal Court of Appeal only if the judge who rendered the decision states that a serious question of general importance is involved.

32. If the Board refuses a refugee claim and the claimant believes that he would be at risk on return to his country of origin, he may apply for a review to determine whether he may be covered by the so-called "post-determination refugee claimants in Canada (PDRCC)" class. This possibility is open only to those persons who were originally considered eligible to claim refugee status. The class was established in 1993 and amended in 1997 in the belief that persons who might be exposed to personal risk if removed from Canada should have the opportunity to apply

for permanent residence from within Canada. The person concerned has 15 days in which to submit this application from the date of the negative decision by the Board. It should be noted that there are limits on the possibility of making this application. These exclude persons who were determined as ineligible to claim refugee status; persons who have withdrawn their claim or whose claim has been declared abandoned; persons who have left Canada since their claim was refused; persons who have been convicted of a serious offence; persons responsible for war crimes or crimes against humanity, or who have been found guilty of acts contrary to the purposes and principles of the United Nations; and persons who have left Canada and returned from a contiguous territory (United States of America, St. Pierre and Miquelon) in order to file a second claim within six months of their departure.

33. The Immigration Act envisages the possibility, for claimants who have not been accepted, of submitting an application for review of their case on humanitarian and compassionate grounds, these cases being known as "humanitarian and compassionate landings". The granting of this measure is also within the competence of the CIC. The possibility covers all claimants, including those considered eligible and non-eligible. In this case, the claimants have to pay the cost of the review. Immigration officers from local offices have authority to consider applications for permanent residence falling within this category. Exceptionally, the Minister of Citizenship and Immigration may decide to review the case. According to the statistics presented by the Government to the Special Rapporteur, in 1999 30,868 asylum applications were made in Canada. Of these, 29,431 were admitted and referred to the Board. A total of 12,981 persons received a positive decision while the applications of 9,387 were refused. According to the Government's statistics, 46 per cent of asylum-seekers are accepted in Canada. From the beginning of the year 2000 until the date of completion of this report (October) 30,763 persons had requested leave to apply for asylum. Of these, 25,178 were accepted as eligible to make the application: 10,815 have received a positive response, 8,124 a negative response and 2,074 persons have withdrawn their request. The Government states that the acceptance rate during the period in question has been 48 per cent. As to persons who, after their request has been refused, asked to be included in the PDRCC category, the Government informed the Special Rapporteur that during 1999, 6,976 decisions were taken, of which 142 were positive. In the year 2000, according to estimates covering the period to the date of completion of this report, it was expected that 4,315 decisions would be taken, of which 24 would be positive.

34. In accordance with Canadian legislation, persons who do not comply with the Immigration Act are required to leave the country under a removal or deportation order. This order is issued by a senior immigration officer or an adjudicator, who determines that a person must leave the country within 30 days, as established by the immigration regulations. A conditional removal order is issued when the IRB's Convention Refugee Determination Division refuses a claim or when a negative decision is reached in the PDRCC process. According to the CIC's information on this matter, resolving these cases takes over one year. Once the case has been referred to the removals and deportations office, the officer assigned to the case examines the file and determines the necessary measures in order to effect removal. When the person in question does not comply with the deportation order (which occurs in about 50 per cent of cases, according to the CIC), the officer dealing with the case issues an arrest warrant for the purpose of subsequent deportation. When, after the warrant has been issued, the person is found, he is

taken to a detention centre, where the officer dealing with the case decides whether he should be detained or released. The final step in this process is taken with the removal of the person concerned from Canada. The departure of persons to countries where there is widespread violence is regulated by the departmental committee on conditions in various countries. As at the end of 1999, Canada was maintaining its ban on removals to Afghanistan, Algeria, Burundi, the Democratic Republic of Congo and Rwanda. According to statistics presented by the CIC to the Special Rapporteur, 8,302 persons were removed from Canada in 1999.

35. The Special Rapporteur received information on delays in reaching decisions relating to refugee status and on the unclear situation of persons who, despite having been recognized as refugees by the Board, have been unable to obtain permanent resident status owing to the lack of reliable documentation as required by the Immigration Act. Since 1993, Canada has required post-determination proof of identity for the purpose of granting residence. Before 1993, Convention refugees recognized by the Board had been exempted from the obligation to submit identity documents in order to apply for permanent residence. Since the adoption of this measure, the situation of a large number of refugees appears to be unclear, since they are unable to produce the relevant documents. In this connection and in an attempt to remedy the situation, in 1997 Canada established the undocumented Convention refugee category. This measure was geared to citizens from Somalia and Afghanistan who were unable to comply with the requirement to produce reliable documentation in order to acquire residence. For these persons, a five-year period was originally established - reduced to three years in 1999 - for obtaining permanent residence. The Special Rapporteur received information that, despite this measure, the problem still existed, since they were unable to obtain the necessary documents.

36. Bearing in mind the limits of her mandate, the Special Rapporteur believes that, in view of the particular situation of the classes of immigrants considered in Canada, there are certain cases involving refugee claimants that merit particular attention. Within the framework of her mandate, the Special Rapporteur has taken into account all the information presented by the Government of Canada, by the specialized agencies of the United Nations and by NGOs.

37. The Canadian Government grants permission for permanent residence to qualified professionals and competent persons who, in the wording of the regulations of the Immigration Act, fall within the "independent" class. The Government includes in this class persons who possess education, work experience and business management experience and are compatible with the Canadian market. The independent class comprises the following subcategories: skilled workers and businessmen. The latter subcategory in turn comprises investors, entrepreneurs and self-employed workers.

38. Although immigration policy in Canada is within the competence of the Federal Government and the provincial governments, the province's priorities in immigration matters come into play at the stage of selection of business persons. For example, the province of Quebec itself selects its independent immigrants. Since 1998, Manitoba has had its own programme for selecting immigrants. In February 1999, the Minister of Citizenship and Immigration and the Minister of Labour of New Brunswick signed an agreement permitting the province to take an active part in the selection of its immigrants. The province of Alberta also has its own programmes for immigrant entrepreneurs.

39. On the question of family class immigration, the immigrant must be sponsored by a close relative aged at least 19 who, at the time of sponsorship, is living in Canada and possesses permanent resident status or Canadian citizenship. In order to be sponsored, the immigrant must demonstrate to the officer responsible for issuing visas that he meets the health criteria. Persons in the family class by virtue of their links with relatives in Canada are, according to information provided by the CIC, as follows: spouse; fiancé or fiancée; parents and grandparents; siblings, nephews, nieces or grandchildren who are orphans, single and aged under 19; and sons and daughters aged under 19. For an immigrant to be able to settle in the country, the relative sponsoring him is required to enter into a legal undertaking vis-à-vis the Government of Canada to assume responsibility for him (if the immigrant wishes to settle in Quebec, the undertaking must be given to the government of Quebec). In accordance with this undertaking, the sponsoring relative agrees to meet the essential needs of those for whom he assumes responsibility. If the relative or his guarantor (where necessary) does not comply with this undertaking, the Canadian Government or the government of Quebec may take judicial measures.

40. Another officially recognized class is that of male and female domestic workers. This possibility for immigration into Canada is regulated under the so-called "Live-in Caregiver Programme", which gives beneficiaries the possibility of obtaining authorization to work in Canada. After two years of work accumulated within the three years following entry into the country, a male or female caregiver may apply to become a permanent resident. There are three requirements for consideration under the programme. First, an assessment is made of the level of education, which must be equivalent to completion of high school in Canada. The Canadian Government considers that the applicant must be capable of entering the general labour market after this statutory period for obtaining permanent residence. The second requirement is 6 months' full-time training or 12 months' work experience in gainful employment, in the labour field which the applicant intends to pursue. The third requirement is the ability to speak, understand and read one of the two official languages (English or French).

41. Employment authorizations are in principle valid for one year and permit the person concerned to work as a live-in caregiver. One of the particular characteristics of the programme is the need to live in the employer's home. According to the information received, this requirement reflects the shortage of Canadian citizens or residents able to meet the demand for domestic labour. The programme establishes legal rights with the aim of ensuring adequate working conditions: weekly days off, paid leave, paid official holidays, standard minimum wage, fair remuneration, benefits, maternity leave and notice of termination of contract. The Canadian Government is not a party to the contract nor is it authorized to become involved in the employer-employee relationship. In the explanatory handbook on the programme it is made clear that it is the responsibility of the employee to familiarize himself with the legislation applicable to him and to protect his own interests.

42. Under the Canadian national health system, live-in caregivers are not required to pay for care in some hospitals or medical expenses. Nevertheless, depending on the province or territory in which the caregiver works, he or she, or the employer, may be required to pay for health insurance. The Canadian Government provides detailed information on the rights and duties of

persons adhering to this immigration plan. In its information leaflet the Government advises workers in this class, after arriving in Canada, to inquire in their place of residence - and hence place of employment - about coverage by the hospital insurance office and about its cost.

43. The Special Rapporteur expressed her concern to Ms. Elinor Caplan, Minister of Citizenship and Immigration, about certain aspects of the programme which had been mentioned to her by various female caregivers and NGOs working with people in this category. In particular, she mentioned the uncertainty as to whether or not it was necessary to work for the same employer during the 24-month period required in order to be able to apply for permanent residence. According to the information received from the Government, this is not necessary; it has been established that the caregiver may move from one employer to another. The Special Rapporteur confirms that this question is clarified on page 13 of the French text of the document explaining the programme. In order to change employers, however, a "record of employment" is required from the first employer with whom the caregiver registered. If the employer refuses to complete the relevant form, the caregiver may apply to the human resource centre of the place where he or she works for a supervisor to request the employer to complete the form.

44. Canada admits temporary workers on an annual basis, most entering the agricultural sector under bilateral agreements. According to the information given by the CIC to the Special Rapporteur, in 1999 81,997 seasonal workers holding temporary residence visas entered Canada from countries such as Australia, France, Germany, Jamaica, Japan, Mexico, the Philippines, Trinidad and Tobago, the United Kingdom and the United States. Attention should be drawn to the admission of workers from Mexico and the Caribbean under the Commonwealth Caribbean and Mexican Seasonal Agricultural Worker Programme (SAW). The general principles of this programme are set out in bilateral agreements between Canada and the countries of origin of these workers.

45. Secondly, students also come under this class. Before submitting an application for permission to study in Canada, the person concerned must be accepted as a full-time student in an educational institution recognized by the Ministry of Education. The Canadian Embassy in the country of origin issues a permit enabling the person to enter Canada as a student and to live in the country throughout the period of his or her studies. The person concerned must obtain authorization to study in Canada before leaving his or her own country.

46. During her visits to Ottawa, Toronto, Vancouver and Montreal, the Special Rapporteur had an opportunity to meet senior officials and to discuss the present situation of migration throughout the world and, in particular, the challenges for Governments posed by current migratory movements. She was encouraged by the positive attitude of the Government to the new situation created by migratory movements which are breaking the patterns of the past. In this connection, she wishes to mention with appreciation the view expressed by the Minister of Citizenship and Immigration, who told the Special Rapporteur of her concern about the question of trafficking in persons. In particular, the Minister expressed her interest in the victims of this new form of violation of human rights affecting male and female migrants who, seeking a solution to a desperate situation, fall into the hands of traffickers. The Special Rapporteur takes note with appreciation of the steps taken by the Canadian Government to try to prevent situations of this kind from arising; these steps are set out in Bill C-31, which, at the time of drafting this report, is being debated in the Canadian Parliament.

III. GENERAL OBSERVATIONS AND INDIVIDUAL CASES

47. The observations and conclusions presented in this report are based on information collected during the Special Rapporteur's mission. An account is given below of some of the questions she addressed in the course of her visits to several cities, arising in areas of particular concern to the Special Rapporteur, not only in the specific context of Canada but in the general context of situations faced by migrants at the present time.

A. Migrants and refugee claimants in detention

48. Canada recognizes the changing reality of migratory movements around the world. The immigration authorities interviewed by the Special Rapporteur all tended to express the view, however, that, owing to the broad scope of the law, many migrants opted to claim refugee status despite the fact that they were not in situations covered by the 1951 Convention. The Special Rapporteur is aware that latent or actual internal conflicts, natural disasters and extreme poverty drive many people to leave their countries of origin in search of better opportunities in other lands. Although such people feel the need to emigrate, they do not necessarily fit into the refugee category defined in the 1951 Convention or more broadly in the Canadian Immigration Act, which includes humanitarian considerations. The constantly increasing number of immigrants may at times cause the Canadian authorities to take special control measures.

49. In this respect, the Special Rapporteur has noted with concern the reactions in British Columbia to the measures adopted by Canada in the summer of 1999 in order to tighten its border controls and the refugee admission process. That reaction may have been due to a great extent to the arrival on the coast of British Columbia of 600 persons of Chinese origin in several boats, in deplorable sanitary, hygienic and psychological conditions. Canada was thus confronted with illegal migrant trafficking and smuggling. The Minister of Citizenship and Immigration asked for the Chinese citizens to be detained so as to prevent them either disappearing over the border into the United States or falling into the hands of traffickers, especially in the case of minors. The Minister decided that, in accordance with the law, asylum-seekers should be given the possibility of a full hearing of their case. The proceedings, however, have become extremely drawn out, which has led to special difficulties: at the time of completion of this report, some refugee claimants were still being held in detention centres. In those centres, the Special Rapporteur noted some worrying psychological situations, which affected the physical health of some of the women detainees owing to their extended stay in detention and the uncertainty surrounding their future, leading to actual crises of anxiety in front of the Special Rapporteur.

50. The Special Rapporteur drew attention to this matter in her interview in Vancouver with Mr. Richard Jackson, Assistant Deputy Chairperson of the Immigration and Refugee Board (British Columbia section). The Special Rapporteur asked to visit the detention centre where some of the persons who had arrived by boat as previously described were being held. The Government of Canada offered the Special Rapporteur the possibility of visiting the Burnaby detention centre for women. She visited the centre on 26 September and interviewed some of the detainees. At the express request of the persons she spoke to at this centre and the other two

centres she visited - in Montreal and Toronto - only their nationalities were given. She asked to visit the Prince George penitentiary, but was eventually unable to go there owing to her limited time in Vancouver and the distance involved.

51. At the Burnaby correctional centre, the Special Rapporteur had the opportunity to inspect the premises and to speak to a group of 12 women of Chinese origin, 10 of whom had arrived in Canada in one of the boats mentioned earlier. She found the premises to be in a satisfactory state and, when she arrived, the group was attending an English class. The CIC provided the services of two Chinese interpreters for the Special Rapporteur's interview with the women. To begin with, the Special Rapporteur met the 12 women together, and they told her how they had arrived in Canada. Later, she interviewed three of them separately: one had come to Canada in one of the boats and two by air.

52. The Special Rapporteur found the first woman to be in a poor psychological state. She said that she had left the People's Republic of China to escape its family planning policy, with the idea of coming to Canada to settle and bring over her husband and her two children. Her family had made all the arrangements for her journey to Canada with people claiming to be agents. When she had been detained in Canada, the woman said that she did not understand the situation she was in, because she maintained nobody had warned her of the danger of leaving China under those conditions. The Special Rapporteur received a letter from the group of detainees who had come by boat, also saying that they did not understand why they continued to be detained after so many months. During the interview with these women, one of them explained how the days were spent in the correctional centre. She said that whenever they cried or became more aggressive as a result of their feelings of anxiety and sadness due to the condition they were in, they were confined to their quarters. Another of them showed the Special Rapporteur a lump in her breast which was causing her considerable pain. When the Special Rapporteur asked her whether she had seen a doctor, she said she had once, a week earlier. The Special Rapporteur asked the warden to ensure that the women were provided with whatever medical and psychological assistance they needed.

53. The other two women said they had come to Canada by air. It had also been through their families that they had used the services of supposed agents for their journey to Canada. In their particular case, according to the information they supplied, these agents had a set of detailed rules explaining how they were to enter Canada. Apparently, the plane in which they were travelling landed in London, where the supposed agent transferred them to a flight to Vancouver. Once there, he told them to put all their passports together in an envelope. When they arrived in Vancouver, still according to the women interviewed, the supposed agent disappeared before the women had passed through immigration, so that they found themselves without documents. They were then detained by an immigration officer and later taken to the Burnaby centre.

54. Before leaving Vancouver, the Special Rapporteur attended a meeting called by several organizations working with migrants. The meeting consisted in an open discussion, at which the Special Rapporteur heard about both the good practices relating to immigration into Canada and about the real problems facing the migrants themselves. With regard to the case of the migrants

from China, the Special Rapporteur personally interviewed a Chinese woman who had come in one of the boats and who, after transiting through several detention centres, had been released, although her immigrant status had still not been settled.

55. The Special Rapporteur also held meetings with NGOs and with the lawyers of some of the women held in the aforementioned centre. She was informed that many of the detainees had been taken initially to the Prince George penitentiary. The lawyers, NGOs and the persons actually detained there agreed that the place was not suitable for the detention of such persons, who - it should not be forgotten - are victims twice over, since they are also the victims of trafficking.

56. On this same subject, the Special Rapporteur had the opportunity to speak privately with a Chinese woman who had arrived in one of the boats and who, after being interned in the Prince George penitentiary and later in Burnaby, had been released pending a decision on her claim for refugee status. The woman told the Special Rapporteur that her family had suffered persecution in China and had made all the arrangements for her to leave the country. When she had arrived by boat on the coast of British Columbia, she had been arrested for having no documents and taken to the Prince George penitentiary. She said that in November 1999 one of the female penitentiary guards had come to the cell she shared with other women and, through an interpreter, told them they had to change cells immediately. She said she asked the guard if she could move first herself and bring her belongings later. The interpreter told her that if she did not comply quickly, the guard would handcuff her and would take her by force. The woman said that the guard left and returned a short while later with another three guards, who seized her by each leg and by the waist, pulled her out of bed and threw her out of the cell. The woman said that she hit her foot against the iron door and her head against the wall. Feeling the blow she began to cry, because she could not move. She said they seized her again with the help of a male police officer to take her to the new cell. When she woke up the next day, she could not move, and so they took her to the infirmary and from there to the hospital, according to her, handcuffed at all times. When she returned from the hospital, she says she had to spend 3 days in a wheelchair and 15 days walking on crutches. Apparently, one night one of her cell companions was very upset and struck her bed hard. One of the women guards came over and aggressed them verbally. She began to sob, whereupon the guard came back and threatened her again. The woman interviewed said that at that moment, feeling so miserable, she threw herself to the ground and decided to commit suicide. She began to beat her head on the ground until the guards came back and seized her again, handcuffed her and took her, she said, to another part of the penitentiary where there were only Western women. When she arrived in the new section, she said they locked her up in solitary confinement, where she remained alone for 25 days. According to her, a few days later another two of her cell companions arrived in handcuffs. She said they were only allowed to leave the cell for one hour a day and never together. The woman interviewed asked the warden why they were allowed out for not more than an hour. According to what the woman told the Special Rapporteur, the warden had told them that they could not come into contact with criminals. She said the food was passed under the cell door. In the end she was transferred back to Burnaby. Although she was very keen to be with the other women, without knowing why she just sat down and began to cry. She then asked to be transferred to a cell where she would be alone.

57. The Special Rapporteur could see what a poor psychological state the interviewee was in as a result of the treatment she had received during the time she was in prison and in the detention centre, and due to the after-effects of her attempted suicide.

58. The Special Rapporteur asked all those at the above-mentioned meeting about the documents used by those persons. Apparently, in many of the cases analysed by the Special Rapporteur, documents had been purchased in the country of origin. The Special Rapporteur shares the Canadian Government's concern about this matter, and, in practical terms, about the apparent lack of cooperation by the Government of China in offering valid travel documents to the persons, who, according to Canada's rules, could not remain in Canada and would have to go back to their country of origin. This problem was one of the reasons for the extremely long detention periods, giving rise to fatal consequences for the individuals concerned and creating a burden for the receiving country.

59. The Special Rapporteur found that both the interviewees and the Government were afraid that these persons might once again fall into the hands of supposed agents. According to the information received from the CIC, most of the persons who had arrived in the aforementioned boats had initially been released pending a hearing, but had subsequently had a detention order issued against them and had disappeared; it was feared that they had fallen into the hands of traffickers owing to their particularly vulnerable situation.

60. The Special Rapporteur visited other detention centres, where she interviewed several internees. These were persons who either had arrived at the frontier and claimed refugee status, whereupon the immigration authorities had decided to move them to this type of centre, or had been staying illegally in Canada, had been caught by the police and had been transferred to this type of centre pending a decision on their status, which would consist either in a residence permit or a removal order.

61. In Toronto, the Special Rapporteur visited a centre known as "Celebrity Inn", close to Toronto international airport. There she interviewed some of the detainees and inspected the premises. The centre was inside the grounds of what had once been a hotel. Men and women were on two separate floors. The Special Rapporteur asked to see the infirmary and first aid facilities. However, the person in charge of the key was apparently not on the premises and was not expected until the following day. The Special Rapporteur interviewed a Costa Rican man who was in a room alone, with a security guard at the door, due to the fact that, according to the person responsible for the centre, he suffered from a skin disease (allegedly scabiosis). The Special Rapporteur asked to speak to him and they talked about his situation. She also interviewed a Nigerian national, who said that he was on his way to the United States and had the necessary documents for entry to that country, where his girlfriend was currently living. Apparently, owing to a bad flight connection he had landed in Canada. He said he had immediately been detained and taken to Celebrity Inn. He maintained he had no intention of remaining in Canada, since he had his family in the United States. He did not understand why he had been detained if he was in transit.

62. The Special Rapporteur also visited the Laval detention centre in Quebec. She saw the facilities there and interviewed some of the male and female detainees. She found the premises to be in good condition. According to centre officials, responsibility for security had been

entrusted to a private security company. She inquired about the rules applied at the centre, a copy of which she was given in several languages. Mr. Dominique Collinge, CIC Regional Programme Director in Quebec, who accompanied the Special Rapporteur on her visit round the premises, said that a code of conduct was being drafted for guards working in that type of centre. The Special Rapporteur, as she had done in other centres she had visited, talked privately with some of the men and women detainees. More specifically, she interviewed a Costa Rican national, who said he did not understand how he had ended up at the centre. According to his account, he had arrived in Canada as a tourist with a minor, who said she was his cousin and who was also at the centre. The person interviewed came from San Isidro de El General, a town situated south of San José. Apparently, both had arrived in Canada with return flights and a hotel reservation. He said that the girl's parents had offered them the trip because she would be coming of age during the week she would be in Canada. They had been detained at the airport, despite, according to him, having valid papers and a return flight. The Special Rapporteur asked him how it could be that he did not know why he was in detention, whereupon he replied that he did not speak either English or French and that the interpreter came only once a week. The Special Rapporteur asked if he had been in contact with his consular authorities and he said he did not know how to go about it. The Special Rapporteur found a telephone directory by the telephone booth giving the numbers of consulates. However, she noted that detainees were given little information in that respect.

63. The Special Rapporteur spoke to a Pakistani, who said that his residence permit had expired and that he was there awaiting deportation. He said he had applied for a ministerial order to be able to remain in Canada on humanitarian and compassionate grounds because his family was being persecuted in Pakistan. More specifically, he said his father had been in prison ever since the new regime had come to power.

64. In the women's section of the centre, the Special Rapporteur spoke with a group of Chinese women, who were being held because they had no papers and no permit to enter Canada. One of them, who said she had left China on account of the country's family planning policy, explained to the Special Rapporteur that when she had arrived at the centre, she was introduced to a man of Chinese origin who said that he was her lawyer. She had believed him and asked him to take up her case in order to claim refugee status. He apparently told her she should not say that she had family in Canada. She believed him and duly wrote it down. However, she said that on the day of the hearing, the person who presented himself as her lawyer was not the same as the one who had visited her in the centre and she found that the statement submitted on her behalf had been completely altered. She then decided to tell the truth and to say that she had a sister in Canada. Apparently, her testimony was not given credence and she was awaiting a deportation order. Her sister came to visit her once a week at the detention centre.

B. Domestic workers and members of their families

65. The Special Rapporteur interviewed many representatives of NGOs dealing with domestic workers in Canada known as live-in caregivers, and live-in caregivers who told her about their individual cases. Most of the NGO complaints regarding the live-in caregivers programme related to their obligation to live in the employer's home and the impossibility of

changing employers during the 24 months required in order to apply for permanent residence. The Special Rapporteur told the NGO representatives that they should listen to the caregivers themselves, for many of whom living in their employer's home was an advantage. Nevertheless, the Special Rapporteur encouraged them to read carefully the information on the programme distributed by the CIC, where the rights relating to that type of work were spelled out. After she had asked the CIC for clarification regarding the question of changing employers, the Special Rapporteur found that in practice there was no such requirement and that the programme clearly established the possibility of such a change. The Special Rapporteur advised the NGO representatives working with this group to pay careful attention to the views of the caregivers themselves. It was decent work and for many workers living in their employer's home was an advantage. Nevertheless, she felt that the two questions had to be considered separately: on the one hand, decent work in perfectly legal conditions with proper working hours, and on the other hand, complaints of working conditions amounting to servitude and employers' abuses.

66. The Special Rapporteur interviewed several caregivers from the Philippines. She was told in particular about the terrible exploitation experienced by one caregiver. The specific case did not originate in Canada, although the story of years of abuse finally ended there when the employer was transferred for professional reasons and brought her caregiver with her. The latter said she had emigrated from the Philippines to work in the home of her employer. When she had arrived in Geneva (Switzerland), where the employer worked, she found that her wages were only 100 Swiss francs a month, that she was only allowed to leave the place of residence in order to collect the employer's two children from school and that she was not allowed to use the telephone. According to the caregiver, that situation had lasted three years, until her employer was transferred to Canada, taking her with her. The caregiver said that, once she was in Canada, she began to suffer physical ill-treatment. One day she decided to escape from the place of residence and go to the police. As the current report was being completed, this domestic worker was awaiting a decision regarding her case.

67. Another of the concerns the Special Rapporteur was told about referred to the 24 months of work required before permanent residence could be applied for. She interviewed several live-in caregivers in Vancouver, Toronto and Montreal, who, because they had become pregnant, had been unable to complete the required period of work. In the copy of the programme handed to the Special Rapporteur by the CIC, it was stated that female workers were entitled by law to maternity leave. The Special Rapporteur believes that it is important to ensure that employers comply with the terms of the law in order to avoid the type of situation where employees are unable to complete the 24 months of work. In many cases the caregivers said that they had been ordered to leave the country despite the fact that their child was a Canadian citizen, born on Canadian territory. They all complained at Canada's violation of international obligations and in particular the Convention on the Rights of the Child, to which Canada is a party. Most of the complaints also alleged a lack of health-care assistance, despite the fact that their children were Canadians. According to what they told the Special Rapporteur, medical facilities in health-care establishments were related to the immigrant status of the parents. In many cases described to the Special Rapporteur, the claimants were still awaiting a decision on their status. According to information received by the Special Rapporteur, most of the cases occurred in the Ontario region.

68. Another of the matters raised with the Special Rapporteur by a number of domestic workers was the actual possibility of reporting employers. They all recognized that they had the right to report abuses. However, in many cases they said that they could not do so in practice, since, if they lodged a complaint against their employer, they were afraid they would lose the possibility of finding work because their complaint would be mentioned on their immigrant file. In particular, they said that they needed references to find new employment and that, if they lodged a complaint, the bad references given by their former employer would prevent them finding a new job rapidly, which in many cases would prevent them from accumulating the working time necessary to claim permanent residence.

C. Temporary workers

69. The Special Rapporteur also interviewed representatives of temporary workers and specifically temporary agricultural workers. According to what she was told, concerns are still felt regarding the enjoyment of these people's rights. The Mexican workers who met with the Special Rapporteur complained that, while working hours were specified in agreements with Mexico, they were not set in the agreements with other Caribbean countries, a fact which gave rise to countless abuses. They also complained that, although the agreement with Mexico specified working hours, there was a clause that gave employers the possibility, "in urgent cases", to require longer working hours. According to the workers interviewed, the agreements do not mention payment for such overtime.

70. One of the temporary agricultural workers interviewed by the Special Rapporteur handed her an account of his personal situation and enclosed photographs illustrating the poor conditions and overcrowding of dormitories. This person was a temporary worker from Mexico, complaining that sometimes workers were loaned to carry out work for other employers who were not those they were contracted with. According to him, this type of practice left them in a situation of greater vulnerability and exposed to worse abuse. He informed the Special Rapporteur that the practice was forbidden under section VIII of the agreement. The temporary worker who had denounced this type of practice was being pressured by the employer and thought he ran the risk of not being included the following year in the temporary work programme. According to information given to the Special Rapporteur, in the year 2000 Canada would have received around 8,000 Mexican agricultural workers.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

71. Canada has had to deal with one of the issues which is currently among the foremost concerns of Governments and civil society, namely, trafficking in persons and illegal border crossings assisted by trafficking agents. Nowadays people want to go to Canada not only for the economic opportunity it offers, but also because it is a stable and democratic country governed according to the rule of law. In this respect, as occurred in British Columbia, migration, both legal and illegal, often tends to occur spontaneously. Since Canada has a regulated immigration system, the greatest problem for the country in this regard is how to respond to people who arrive in Canada spontaneously, whether by normal channels or after travelling in terrible conditions.

72. The Special Rapporteur has had an opportunity to appreciate the provisions made in Canadian legislation for the protection of human rights. In this respect, she has appreciated Canada's good practices with regard to integrating migrants. She encourages Canada to persevere with the plans for resettlement and integration it is developing jointly with civil society and more specifically with NGOs. In her opinion, a specific example of good practice is the Metropolis Project, conceived in 1994 and launched in 1996 in the belief that for immigration and integration policies to succeed, they need the coordinated support of civil society. She attaches importance to the work of NGO networks in terms of assisting people who have to leave the country, through visits, advice and social work.

73. Canada is aware of the benefits the country derives from immigration. As this report was being finalized, the Canadian Parliament was considering the Immigration and Refugee Bill C-31. This Bill includes and regulates aspects which are of concern to the country at this time and more generally of concern to the international community, such as the question of trafficking in persons and illegal border crossings.

74. The Government has given priority to the question of immigration and, more specifically, to the questions of trafficking in persons and illegal entry. The Special Rapporteur supports the Government's efforts to deal with the question of human trafficking and requests that it take account of the rights of individuals exposed to trafficking or who fall into the hands of gangs of traffickers, who generally make irresistible offers of a rosy future. The Special Rapporteur would like to emphasize the need to avoid criminalizing the victims of this type of action.

75. The Special Rapporteur wishes to thank the Minister of Immigration and Citizenship for the concern she has shown for an issue which nowadays affects a considerable number of people, namely, illegal trafficking in people and penalties for traffickers. The Special Rapporteur welcomes the United Nations Convention against Transnational Organized Crime and its additional protocols, which cover the two aspects mentioned above. In this respect, she wishes to point out that an effort is needed to make them effective, in view of the social demand for addressing this matter and, what is more important, for affording protection to the victims of these practices. This situation of uncertainty, depression, loss of freedom, lack of medical support, the shame of having to be taken in handcuffs to make a statement or to go to hospital, while having committed no crime but that of being deceived, is one that affects male and female migrants. It should be possible to offer expert help to these persons, for instance through the Canadian Council for Refugees or the Consultation Group, in order to provide assistance and psychological and medical advice to people who have to return to their countries of origin.

76. With regard to detention centres for illegal migrants, the Special Rapporteur had cases brought to her attention by migrants who had been detained and had remained in that situation for a long period of time. She was particularly concerned at the psychological conditions which the migrants suffered while waiting for the Commission to reach a decision on their case.

77. The Special Rapporteur believes that there is an active NGO movement and that more direct help could be provided. She also takes the view that, since there is a well organized movement outside, there should be coordination of prevention work, care and psychological

advice and social assistance services. The NGOs dealing with complaints should arrive at a working agreement, which would achieve effective protection of the human rights of persons who are undocumented or who are or have been victims of human trafficking or conditions of servitude.

78. With regard to conditions of detention, the Special Rapporteur found that, generally speaking, conditions of hygiene in the centres were satisfactory, except for Celebrity Inn in Toronto. However, she is concerned at the treatment received by detainees from the security guards at the centres. Without entering into personal considerations, she is concerned that the guards are trained to deal with different kinds of problems. In this respect, she sees the codes of conduct which are currently being drafted to regulate the centres as a very positive development.

79. A further concern of the Special Rapporteur is the lack of contact between detainees awaiting a decision on their case and their consular authorities. Although she found that telephone directories listing the consulates were available to detainees in the detention centres, most of the detainees interviewed were either unaware of the fact or did not understand the system, or else did not respond to the calls of the consulates when the latter manifested themselves. The Special Rapporteur believes it is a question of information, which is more up to the persons dealing directly with the detainees, since the Government has already provided guidelines to make these services available.

80. The Government should be commended for its caregivers programme, which clearly sets out the rights of persons covered by this type of programme. She believes, however, that despite the clarity of the programme, situations occur which are not covered and which leave beneficiaries in a vulnerable position with respect to employers who do not abide by the rules of the programme. The Special Rapporteur would favour a well-targeted information campaign on the rights of these workers, emphasizing that the work is decent and decently acquired and specifying the workers' rights since, when contracts are concluded privately, the workers are in many cases kept in ignorance of their rights.

81. The Special Rapporteur is concerned about a number of shortcomings that appear in the realization of the rights of temporary agricultural workers. While encouraging the Government of Canada to continue with this type of programme, the Special Rapporteur would ask it to take the necessary steps to prevent this type of worker being abused by employers. She advocates giving more emphasis to the dignity of this type of work and making it easier for those covered by this type of programme to report any abuses to which they are subjected, by preventing employers from coercing employees as a means of forestalling such complaints.

B. Recommendations

82. Taking into account all the information she was able to gather during her visit to Canada and after analysing the cases submitted to her, the Special Rapporteur wishes to make recommendations to the Government, to civil society and to the migrants themselves, as called for by the resolutions that gave rise to her mandate.

Government

83. The Special Rapporteur encourages the Government of Canada to continue its efforts to involve NGOs working with migrants and the academic world in the development of integration and settlement policies. She also encourages the Government to take advantage of the experience of these groups in the development of its immigration policy, taking into account the best ways of preventing discrepancies between legislation and the reality for which it was drafted.

84. The Special Rapporteur recognizes Canada's effort to involve these groups in migration issues. More specifically, she recognizes the role of the Canadian Government in the Puebla Process and encourages it to continue with and further develop this type of forum.

85. The Special Rapporteur requests the Canadian Government to take the necessary steps to provide psychological care to persons held in detention centres, in order to assist those affected by depression and to ensure that they are not left too long without qualified medical attention.

86. The Special Rapporteur shares the Canadian Government's concern regarding the risk that unaccompanied minors may fall into the hands of traffickers or unscrupulous individuals. In this respect, she urges the Government to seek solutions with host families as a means of keeping minors out of detention centres.

87. The Special Rapporteur welcomes plans to draw up codes of conduct for security staff in detention centres. She urges the Canadian Government to ensure that persons who are detained and carry no criminal record are dealt with in reception centres by staff able to respond to that type of situation, in order to avoid the sort of situation which occurred at the Prince George centre, for example.

88. The Special Rapporteur encourages the Canadian Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In this respect, she encourages the Canadian Government to keep up its good practice of respecting and defending human rights by supporting this international instrument, which will provide protection to migrant workers and their families not only in Canada, but also in many other countries where Canada, through its support, is endeavouring to ensure that all human rights are respected and protected for all.

89. The Special Rapporteur wishes to draw the Canadian Government's attention to the question of xenophobia, racism and racial discrimination, by which unfortunately the whole world is nowadays affected. The Government should be aware of the problem and how it affects migrants. Xenophobic and racist behaviour contributes nothing either to the future or to the democratic development of society, and an immediate effort must be made to prevent it from manifesting itself.

Civil society

90. The Special Rapporteur wishes to thank the NGOs for the support she received throughout her visit and, in particular, for the arrangements they made for interviews with several individuals in each of the cities she visited. After sifting through all the material, the Special Rapporteur wishes to encourage the NGOs to continue providing advice, information and protection to migrants. In practice, she suggests that they should strengthen their positions and become directly involved with detained or undocumented migrants, while seeking to combine their efforts in the struggle to defend the human rights of migrants.

91. The Special Rapporteur recommends that NGOs support the migrants themselves and seek their involvement so that they can speak for themselves in defence of their rights.

92. The Special Rapporteur suggests that they should continue trying to develop joint programmes with the Government - for example, directed against racism, xenophobia and racial discrimination. She suggests that they should not stop at complaints and that openings should be sought for dialogue in the development of these policies.

93. With regard to the universities, the Special Rapporteur would encourage them to venture beyond pure theoretical research and to involve students in research programmes on the human rights of migrants.

Migrants

94. While she is aware from personal experience of the difficulty of taking such action in practice, the Special Rapporteur encourages the migrants themselves to continue to report abuses, especially domestic workers and temporary workers, in order to ensure that programmes operate in practice as intended.

95. The Special Rapporteur recommends that the Government, civil society and the migrants themselves should combine their efforts to combat the trafficking of persons and abuse perpetrated by those who try to take advantage of the vulnerable, not to say precarious, situation in which the migrants find themselves.

96. Lastly, in view of the dynamics of migration in Canada, the Special Rapporteur draws attention to the desirability, for the Government, the authorities, civil society, NGOs, the migrants themselves, the universities and churches, of avoiding polarized attitudes - good versus evil, friends versus enemies; they should instead share responsibility for defending the human rights of the persons we are concerned with, especially the victims of human trafficking. Shared responsibility is a fundamental element in countering this type of human rights violation. This shared responsibility must include both the receiving countries and the countries of origin or transit, at all the levels mentioned above. Whenever this complex dynamic process becomes polarized, the effect is to leave victims uninformed and isolated and to open the way to human rights violations.